

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
SPECIAL CIVIL APPLICATION No 2348 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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NARSINBHAI S PATEL

Versus

SHIVSINH B RATHOD  
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Appearance:

MR AJ PATEL for Petitioner

NOTICE SERVED for Respondent No. 1

MR. S. DAVE, Ld. APP for Respondent No. 2  
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/08/2000

ORAL JUDGEMENT

In the present petition, rule has been issued and  
ad-interim relief in terms of para 10 (b) has been  
granted on 27-4-1989.

The facts of the present petition are that  
petitioner being an agriculturist was desirous of  
purchasing a piece of agricultural land at village  
Saroli. The petitioner approached the respondent No.1  
for the purpose of purchasing his land bearing Survey  
No.76 admeasuring 2 acres and 8 gunthas of village  
Saroli. At the time of purchase the respondent No.1  
represented to the petitioner that he had made an  
application under Section 43 for the purpose of obtaining  
permission in a case No.87 of 1979 before the Collector,

Sabarkantha. A registered Sale Deed was executed on 8-3-79 and permission was ultimately granted by the Collector by his judgement and order dated 13-11-1979. The said permission was granted by the Collector on payment of Nazrana payable under Section 43 of the Tenancy Act read with rules. According to the petitioner, at the time when the purchase was effected, the respondent No.1 did not have the requisite authority to sell the land, but on obtaining the permission on 13-11-1979, the irregularity in the purchase was cured. It is the case of the petitioner that the respondent No.1 wanted to take the advantage of irregularity of his own and therefore, created difficulty in the smooth cultivation of the land in dispute. The respondent No.1 had pocketed the purchase money and was trying to make application for the purpose of recovering the land and also retaining the consideration of the land that he had pocketed. The Mamlatdar and A.L.T., in a Tenancy case No.2021 of 1980 initiated the proceedings under Section 84C of the Tenancy Act, tentatively holding that the sale violated the provisions of the Tenancy Act. When the proceedings were initiated, permission was granted by the Collector. This fact was also pointed out to the Mamlatdar and A.L.T., Himatnagar. It was pointed out to the Mamlatdar and A.L.T., Himatnagar that petitioner's titles could not be held to be defective because the permission was obtained on 13-11-1979 and from that day onward, the petitioner stood complied with all the provisions of the Tenancy Act. Placing the reliance on provisions of Section 43, it is the case of the petitioner that on a plain reading of Section 43, the day on which the permission was granted, the title of the petitioner became clear, but without considering the aspect, the Mamlatdar and A.L.T., Himatnagar, by the judgement and order dated 21-8-1981 was pleased to hold that there was violation of Section 43 and therefore, the sale in question was held to be violative of Section 84C of the Tenancy Act. The petitioner, being aggrieved by the judgement and order passed by the Mamlatdar and A.L.T., Himatnagar, preferred Tenancy Appeal No.3 of 1985 under Section 74 of the Tenancy Act, before the Deputy Collector, Himatnagar. The said appeal has been dismissed by the Deputy Collector on 15-6-1985. Thereafter, the petitioner preferred revision application No.609/1985 before Gujarat Revenue Tribunal. By judgement and order dated 16-6-1987, the said revision application was dismissed by Gujarat Revenue Tribunal. Being aggrieved, the petitioner preferred a review application being TEN. C.A. No.21/87, which was also dismissed by the judgement and order passed on 31-1-1989 by the Gujarat Revenue Tribunal.

Learned Advocate, Mr. Patel submitted that when the Sale Deed was executed on 8-3-1979 prior to that a permission application No.87/79, under Section 43, was submitted by the respondent No.1 before the Collector, Sabarkantha. But during the pendency of the said application No.87/79, the Sale Deed was executed on 8th March, 1979, but subsequently the Collector by the order dated 13-11-1979 granted the permission. Therefore, according to Mr. Patel, there was, in fact, no breach of the provisions, because Sale Deed was executed on 8-3-79. Prior to that, permission application was already submitted by respondent No.1 to the Collector, Sabarkantha. In such situation, when Sale Deed was prior and permission is subsequent, the said permission is considered to be legal and valid and therefore, revision application is required to be allowed by the Tribunal. The same submission has been made by the Advocate of the respondent authority. Mr. Patel has also pointed out that permission has been granted by the Collector on certain conditions and that conditions are annexed at page 20 of the petition. Considering the permission given by the Collector, Sabarkantha, the Revisional Authority has read said condition in a different manner and come to the conclusion that even the condition which was incorporated in order of permission has also been violated by the petitioner, because according to condition No.1 page 20, it requires a fresh registered Sale Deed within a period of three months and it has not been satisfied or fulfilled by the petitioner and, therefore, also the said permission is considered to be technically cancelled. Mr. Patel submitted that the said findings of the Revisional Authority totally amount to non-application of mind, because the petitioner and the respondent were not to execute Sale Deed again in respect to the very said land in question, but a permission was granted by the Collector with a condition that if Sale Deed is not executed, then Sale Deed shall have to be executed between the parties within three months from the date of permission. Mr Patel submitted that, no doubt, without permission Sale Deed cannot be executed between parties, then it is not necessary as per the said condition No.1 at page 20 that a re-Sale Deed between the same parties for the same land in question is required to be executed. Therefore, Mr Patel submitted that the Revisional Authority has ignored the Government Circular dated 7th September, 1980, which has been submitted by the Advocate of the respondent Authority and also not appreciated the condition No.1 at page 20 of the petition and come to a different conclusion and therefore the Revisional Authority has not applied the mind

properly and come to the conclusion which is contrary to the record and ignored the Government Circular dated 7th September, 1980, which come right in favour of the petitioner to treat such permission of Sale Deed is legal and valid. In view of this submission, Mr Patel submitted that the party may be directed to reconsider the said aspect within a reasonable time, while bearing in mind the fact of Government Circular dated 7-9-80.

Learned APP, Mr. S. Dave has also submitted that the said circular dated 7-9-80 has not been considered properly and for that the Revisional Authority may be directed to reconsider the very same document and pass proper order in accordance with law.

I have considered submissions made by both the learned Advocates and according to my opinion, the submission, which has been made by Advocate, who appeared on behalf of the respondent Authority, that Government Circular dated 7th September, 1980 is having effect to such permission, is legal and valid in respect to Sale Deed which was executed between parties prior to the permission. Similarly, the observation made by the Revisional Authority in respect to condition No.1 at page 20, also amounts to non-application of mind and therefore, according to my opinion, if it is directed to rehear the matter and reconsider the Government Circular as well as condition No.1 of at page 20 by remanding back to the Tribunal, it will meet ends of justice between parties.

Accordingly, the order passed by the Gujarat Revenue Tribunal in review application No.21/87 dated 31-1-1989, and order dated 16-6-87 passed in Revision Application No.609/85 are hereby quashed and set aside and it is directed that the Gujarat Revenue Tribunal should decide the revision application No.609/85 afresh after giving hearing to the respective parties and considering the Government Circular dated 7-9-1980 and also considering the fact of condition No.1 at page 20 of permission order dated 13-11-1979 and pass proper orders in accordance with law within some reasonable period. Therefore, present petition is allowed. Order passed by the Gujarat Revenue Tribunal in revision application No.609/85 dated 16-6-1987 and review application No.21/87 and order dated 31-1-89 are hereby quashed and set aside with a direction to the Gujarat Revenue Tribunal to decide afresh revision application No.609/85 in accordance with law within reasonable time and during the interim period, earlier interim order dated 27-4-1989 passed by this Court in terms of para 10 (b) of the

petition shall remain continued till the revision application is decided by Gujarat Revenue Tribunal. Rule is made absolute to that extent. No order as to costs.

24-8-2000 (H. K. Rathod, J.)

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